

W5YI

National Volunteer Examiner Coordinator
REPORT

Up to the minute news from the world of amateur radio, personal computing and emerging electronics. While no guarantee is made, information is from sources we believe to be reliable. May be reproduced providing credit is given to The W5YI Report.

Fred Maia, W5YI, Editor, P.O. Box 565101, Dallas, TX 75356-5101

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December 1, 1990

ARRL, FCC MAKE ORAL ARGUMENTS IN 220 CASE

League's Performance Leaves Witnesses Doubting Success

On November 16 the American Radio Relay League and the Federal Communications Commission crossed swords for the last time in Gen. Docket 87-14, the reallocation of 220-222 MHz from amateur usage to private land mobile radio services. The FCC rejected petitions for reconsideration of the reallocation decision, so the ARRL appealed the decision to the U.S. Court of Appeals for the District of Columbia Circuit.

Approximately 100 FCC decisions are currently on court appeal. The FCC wins some cases and loses some. Judges who rule against the Commission are sometimes quite critical of the agency's handling (or mishandling) of its proceedings. But the FCC rarely loses spectrum allocation cases.

For now, the 220-222 MHz band is still available to the Amateur Service, and it will continue to be available until a date and time to be announced by the FCC next year. Final rules for the commercial and governmental use of 220-222 MHz are still being worked on.

Assuming that the bugs in 220 MHz, 5 kHz narrowband mobile radio hardware can be worked out, the "new" band promises to be a bonanza for two-way radio shops, repeater service providers

and manufacturers.

Several months ago the ARRL and FCC submitted their written briefs to the court. (We summarized these materials in our Sept. 15, 1990 issue.) The attorneys are also granted time to make oral arguments before the court. Judges hearing the case were Ruth Bader Ginsburg, Harry T. Edwards, and Laurence H. Silberman. Except for one judge who had difficulty computing that 220-225 MHz was a span of five megahertz, the judges seemed knowledgeable about the technical issues.

The FCC's case was not argued by the Commission's General Counsel, Robert Pettit. In his previous job, he was deeply involved in representing United Parcel Service, the most visible benefactor of the 220 spectrum takeaway. So he has excused himself from working on this case to avoid a conflict of interest. Instead, FCC attorney Sue Ann Preskill defended the agency's actions.

Arguing for the amateur side was Stephen N. Shulman. The ARRL retained Shulman's firm because of its experience in appeals cases.

Key points of arguments

Here we summarize the main points made by

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both sides. This is not intended to be verbatim quotation, but rather paraphrasing of each side's ideas and the questions from the judges. (Judge's statements are in quotes.)

The session began rather abruptly with technical discussion by Mr. Shulman.

Shulman (ARRL): Amateurs' high-speed packet data network is impacted by this FCC action. In order for 56 KBS data rates to be transmitted, it must be done at 220 or above. Lower frequencies can't be used because the FCC confines lower-frequency emissions to 20 kHz widths. Frequencies above 225 can't be used because of decreased range, requiring a tripling of the number of transmitters, and because of amateurs' secondary status in those bands.

The FCC used the ARRL Repeater Directory to ascertain 220 band usage. But the ARRL has 150,000 members, less than one-third of the actual population of licensees. The FCC conceded that some geographic areas are congested, but we can't have a national high-speed packet data network that ignores those areas.

Commissioner James Quello has called for the 150 MHz private radio band to switch to spectrum-efficient technologies. Also, in a special case granting more spectrum for public-safety use in Los Angeles, the FCC stated it wanted to resolve future congestion not with more allocations but with more spectrum-efficient technologies. The FCC has avoided coming to grips with this issue and has only foreclosed the possibility of amateurs developing their high-speed nationwide packet network.

Preskill (FCC): In this case the FCC weighed the claims of amateurs and the land mobile radio industry. It finally decided to grant 60% of the band to amateurs and 40% to land mobile radio. Land mobile communications concerns not only phones in cars but also government, police and fire communications.

"Counsel, I have an arithmetic problem - 220-225 MHz equals six megahertz?" [Someone pointed out that it is only 5 MHz.]

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Preskill (FCC): The only way narrowband technology is likely to develop is in some unoccupied spectrum for it. In the 150 MHz band, technically it was too difficult to squeeze narrowband operations into existing operations.

"Too difficult only under present levels of technology. Someday, it will be sufficient enough to squeeze narrowband stations in all over the spectrum."

Preskill (FCC): That's right. But how do we get it started? Part is a technical problem, getting the bugs out, and part is providing incentives for land mobile industry to develop the equipment. Other bands available to land mobile radio are unsuitable. Lower bands unsuitable due to excessive range; the 150 MHz band unsuitable due to congestion and displacement of small businesses and government users that would be required.

"If I understand the argument of amateurs, it is that you did not adequately consider the impact on the amateur service of crowding them into 222-225 MHz, and that you relied on the association's directory of repeaters. But the major argument is that it doesn't consider the non-repeaters operating in 220-222 MHz, who you have no information about -- nobody seems to."

Preskill (FCC): Any fair reading of the FCC's decision shows that the Commission gave great consideration to amateur needs. We tried to determine what was going on in each amateur band. Amateurs agree to sub-allocate their bands among themselves. This is not imposed by the Commission. The FCC doesn't have any way to know what the bands are used for.

"Are all amateurs part of this agreement, or just the members of the association?"

Preskill (FCC): I believe it's just the members of the association. Now, we understand that the amateurs are unhappy with this decision. Nobody likes to have to give back something that they thought they had. But nobody owns the radio spectrum. And, amateurs originally had only a secondary allocation in the band, and they have been on notice for a long time that this band

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could be reallocated.

From the evidence we could get, we showed 773 fixed control links, about 1,100 weak-signal operations and 115 packet operations. In contrast, in 222-225 MHz it was about 1,279 repeaters. The Commission relied on this.

"But their argument was that repeaters were in the high end of the band and that non-repeaters were operating in 220-222. Their argument is that the FCC totally underestimated what was going on in 220-222 MHz. Your reasoning is a tautology [a needless repetition -Ed.]."

Preskill (FCC): There were only 115 packet operations in 220-222. These could be reaccommodated elsewhere. It's true that in higher bands stations would have to be placed closer together. But the FCC had to balance the needs of amateurs and the land mobile radio industry.

The hope is that narrowband technology could be developed in 220-222, then taken to other bands, and probably force the land mobile operators to accept it. But it seemed unreasonable to expect the land mobile operators to accept it on the hope that narrowband would develop, especially when two MHz was available to prove it in and the amateur uses already there could be reaccommodated.

Shulman (ARRL): I did not mean to say that only ARRL members could list in the repeater directory. I meant that only members might be expected to list. It's possible that there are non-members who list. But the scope of the ARRL is less than one-third of the population of users.

"Would you be satisfied if the FCC required all amateurs to be members of the association so you would know where they are?"

Shulman (ARRL): That doesn't mean that we would know where all of them are, though I expect that the association would like to have a larger membership.

The most important thing Sue Ann Preskill said was that the FCC is going to have to put narrow-

band technology back into the 150 MHz band and it will have the same discomfort then that it has today.

"But their theory is that when they do put it back in, it will be more developed, more effectively put in not just at 150 MHz but throughout the entire spectrum. It will slip into the crevices. That's their theory, a bigger pie for everyone."

Shulman (ARRL): The FCC will run into difficulty with users of other bands, everyone using wide-band radios doesn't want to give them up. Narrowband is expensive. All the FCC is doing is keeping the amateurs out.

"Don't you have any faith in technology, in progress?"

Shulman (ARRL): I have great faith in technology, your honor, but the way you call people to do technology is to require them to use it. Not by waiting.

"Do you discredit the FCC's information that they are pursuing this course because they want the technology to develop, that the technology will be developed through this means? It's a prediction of what will come. Don't we own them that deference?"

Shulman (ARRL): Yes, but I am suggesting that that is not what the FCC did. FCC took the easy way out with respect to requiring the use of narrowband technology. They postponed requiring the narrowband technology, contrary to what they announced in the California ruling, that they would require spectrum efficiency rather than allocate more spectrum. They did it in the context of foreclosing the possible nationwide high-speed packet data network and that is arbitrary and capricious.

And about the higher bands, the amateur service in 420-450 MHz is secondary to government radiolocation, Canadian and American mobile radio (in certain areas) and space telecommand. In 902-928 MHz amateurs are secondary to industrial, scientific and medical, automatic vehicle monitoring, government radiolocation, government

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mobile radio. It's not possible for the nationwide high-speed packet data network to take place in those frequencies.

[End of session.]

Amateur reaction

Mr. Shulman scored rather low in the estimation of several amateurs who attended the proceedings. "We -- meaning five or six of the hams that showed up to hear the proceeding -- got together afterwards and we do not think Shulman made a very good presentation," one amateur told us. "He several times referred to the ARRL as the Amateur Radio Relay League. He swayed back and forth as if he was very nervous..."

"One of the folks when it was over turned to us and only half-jokingly said, 'Well, I guess we had better sell our 220 gear.' That was a bit pessimistic. We saw this as an opportunity to really make a good case for amateur radio and for what the FCC did that was wrong and that case wasn't made.

"It was pretty much the same old arguments over and over again ...and not the most relevant ones for the jurisdiction of the court. This was the opinion of us armchair lawyers ...not real lawyers," he said.

"I think the FCC had a better presentation. I don't think anyone improved their position on the basis of the oral arguments. I don't think that these judges would decide the case based on the fact that the FCC's lawyer did a better show than the League's lawyer.

"But it could have been an opportunity for the League to better its position had they really had a good presentation that hit the key points and refuted the FCC points. They didn't do that. They didn't take an aggressive stand. It was more of a 'hold our ground' than going on the offensive or achieving any advantage."

We'll only see the final results of the Save 220 Campaign when the appeals judges issue their ruling in a few months.

MISCELLANEOUS RULE CHANGES PROPOSED

The FCC released a *Notice of Proposed Rule-making* on November 16 addressing four petitions from the amateur community seeking minor changes in §Part 97 language, technical standards and operating requirements. The petitioners believe the revisions would make the amateur regulations more useful.

The FCC said "...some of the requested changes reflect preferred terminology, clarify the application of a rule, or assist in understanding the rule. Other changes are repetitious or clearly do not warrant a change in the current rules."

Terminology: The ARRL asked the FCC in RM-7243 to explain several additional terms in §97.3. The Commission agreed that "telecommand," "telemetry," and "space telemetry" should be defined, but not "tactical call sign," and "digipeater" since they are not used in the rules.

The FCC said the phrase "emergency communications" did not require further explanation. "Additionally, we will retain the word 'channel' where it appears because the term recognizes that a transmitted signal occupies a narrow band of frequencies rather than a single frequency. References to frequency drift and Doppler shift in the definition for the term "bandwidth" will be deleted since these variables are independent of the transmitted signal bandwidth.

Club Membership: The League wanted Section §97.5 to be changed to increase to at least four the minimum number of members needed for the purpose of holding a club station license. ARRL believes that if the issuance of club station license ever resumes, the present two person requirement would invite applications from parties that are not clubs.

The FCC did not feel the minimum number of members should be increased. Club station licenses have not been issued for thirteen years and "...we do not foresee that we will resume doing so. To increase the number of required club members, moreover, could deny license renewal and modification to some of the existing 2,065 club stations."

Station Aboard Ship or aircraft: The FCC also refused to change the §97.11 requirement that an amateur station must be independent of all other radio apparatus installed on a ship or aircraft. The League stated the requirement which prohibits an amateur station's transmitted signal from causing interference to other

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equipment is sufficient regulation.

"We do not encourage amateur station apparatus being used as an alternative to maritime station apparatus nor would amateur station equipment generally meet the equipment certification requirements for the aviation or marine services. The distinction between these two services should not be blurred."

Automatic Control: The ARRL requested that §97.109 be revised to delete the prohibition against automatic control of an amateur station when it is transmitting third party communications. Section §97.109 already provides an exception for stations retransmitting digital packet radio communications on 6 meters and shorter wavelength bands. The ARRL stated that the content of a message being retransmitted by an amateur station should be the sole responsibility of the originating station.

"The concept of control of an amateur station and responsibility for the station's transmissions, however, is based on the Communications Act. Control is not severable into technical control, content control of messages the licensee originates, and content control of messages originated by other users. When an amateur station is under local or remote control, the control operator directly supervises every transmission. Such is not the case where the station is operated under automatic control," the FCC said.

"Amateur service licensees are free to create and pioneer communications systems. Our regulatory approach, therefore, is to state the basic requirements that each amateur operator and each station must observe. Amateur stations are not common carrier communication systems although technically, some configurations of amateur stations may be similar. All rules apply individually to each amateur station licensee and each station control operator is responsible for the messages transmitted as well as those retransmitted by the station. Therefore, no change in the rule is proposed."

In addition, the ARRL wanted it made clear in the rules that a Commission representative may order an automatically controlled station to cease transmission because of improper operation or harmful interference only after the alleged offending station has been given the opportunity for a hearing. Only stations transmitting RTTY or data emissions above 50 MHz and other stations including auxiliary, beacon and repeater stations specifically designated in §Part 97 may be automatically controlled.

The FCC clarified §97.109 by saying "Because an automatically controlled station does not have the control operator at the control point who is able to shut down a transmitter operating in violation of the rules,

we regard automatic control as being less reliable than local or remote control and, therefore, in the nature of a subordinate privilege. ...a condition of using this type of control is that it may be used only so long as the station does not cause any interference or not improper transmission radiates from the station. ...the control operator must cease automatic control of the station upon notification by an [FCC] Engineer-in-Charge that the station is transmitting improperly or causing interference to other stations, and the licensee is not entitled to a hearing before such notification by the EIC.

"The station may, however, continue to operate using local or remote control and, therefore, the station has not been ordered to cease transmitting. This approach is similar to that taken in other areas. ...Were hearings required in this situation, the Commission would have to reassess whether the public interest is served by a rule permitting operation under automatic control."

Retransmission From Other Services: Another ARRL request involved allowing amateurs to retransmit time, propagation and weather broadcasts from the National Oceanic and Atmospheric Administration and Dept. of Commerce. The League feels these retransmissions are of great usefulness and interest to amateur operators.

The FCC said the ARRL request is repetitious because the issue was addressed in PR Docket 88-139 where it found no reason to allow the use of amateur service frequencies for such purposes since these transmissions are routinely available over the air with inexpensive receivers.

Amateur Operator Compensation: The League also requested a revision of the conditions in Section §97.113 under which a person may accept compensation for serving as a control operator of an amateur station. Currently, compensation may only be accepted by the control operator of a club station when it is transmitting telephony practice and information bulletins on all ten of the amateur service MF and HF bands.

The ARRL states that transmission on ten bands is neither practicable nor necessary. Club station W1AW, the station licensed to the ARRL Headquarters Operators Club, has the capability to transmit on only six of the bands and that the desired coverage is obtained.

The FCC said that while there was opposition to the proposal, "The ARRL request ...appears to benefit the amateur community and is consistent with the intent of the rule. Therefore, we propose to amend this rule to allow a club station control operator to

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accept compensation when the station schedules operations on at least six amateur MF and HF bands.

International Third Party Communications: The ARRL requested a change in Section §97.115 which allows an amateur station to transmit messages for a third party. The requested amendment would allow an FCC licensed amateur station to transmit communications for a third party, who holds some type of amateur service license, to a country that has not made the necessary third party communications agreement with the United States. The ARRL said this change would permit third party communications for amateur operators who may not have the correct class of license or whose foreign license does not authorize the third party to be the control operator of a FCC licensed amateur station.

In denying the request, the FCC said this argument was considered in their recent rewrite of the amateur service rules. "The ARRL request is repetitious in addition to, in our view, violating international regulations..." The ITU Radio Regulations (Geneva, 1979) absolutely forbids amateur stations to transmit international third party communications unless there is a special arrangement between the countries concerned. The U.S. has third party communications arrangements with forty-three countries.

Section §97.115 provides an exception where the message is for any third party who is eligible to be the control operator of the station. This exception eliminates the necessity for the third party to travel to the station in order to send the message, as the first party control operator, to a station in a country that has not agreed to permit third party communications with the United States.

Station Identification: The FCC wants comments on whether amateur stations should identify at the beginning of their communications as well as at the end.

Quiet Hours: The ARRL wants the rules to specifically state the due process procedures to which a licensee is entitled when the Commission imposes quiet hours. The FCC proposed to simply this rule in its recent rewrite, but due to widespread opposition kept its original wording intact. "...it would be duplicative and unnecessary to list the procedure for review of actions in every substantive rule."

Auxiliary Station: The ARRL wants §97.21 to delete the condition that an auxiliary station can be automatically controlled only when it is part of a repeater system, so that amateur operators can experiment with new system configurations that use auxiliary links. The FCC agreed.

Space Stations: The FCC also agrees with the

ARRL that space telemetry operation rules should be more flexible than the current rule which limits space telemetry transmissions to those that are results of measurements. The ARRL wants expansion to allow telemetry to also facilitate communications.

Remote Control: The FCC agreed to a number of ARRL suggested minor technical amendments clarifying remote control, telecommand and telemetry from objects such as balloons, model surface and aircraft.

Tone Modulated Telegraphy: The FCC declined to permit emission types A2B and F2B, tone-modulated telegraphy, in all frequency segments where emission F1B, telegraphy for automatic reception, is now authorized. "We did this for all amateur service frequencies in the VHF and higher wavelength bands, but we found no justification to do so for the MF and HF wavelength bands due to our obligation under the international regulations to limit the interference potential of amateur stations."

Digital Codes: The FCC agrees with the ARRL suggestion to incorporate the popular terms for three digital codes in their definitions. These are the 5-unit Baudot, and 7-unit AMTOR and ASCII codes.

Power Amplifier Ban: The ARRL wanted deletion of the rule prohibiting approval of amplifiers capable of transmissions in the 11-meter CB band. "The ban on power amplifiers makes our enforcement procedures more efficient and effective. Without the ban, we believe our enforcement demands would certainly increase."

Telegraphy Examinations: Gordon Girton, W6NLG of the Sunnyvale VEC wanted deletion of all prosigns except the slant mark and other telegraphy examination changes. Girton also wanted to not allow General class operators to be volunteer examiners. "The only class of license for which the General Class operator can administer an examination is the Novice Class operator license. Inasmuch as we have proposed to discontinue issuing new Novice Class operator licenses in PR Docket 90-55 [Communicator Class], consideration of this request is premature."

Volunteer Examiners: The ARRL wanted §97.515 to be changed to allow a person whose amateur station or operator license was revoked or suspended to serve as a VE after a ten year period. "Integrity is the cornerstone of the volunteer examiner system and is a paramount factor used to protect its effectiveness. Inasmuch as there are a sufficient number of qualified persons willing to serve as VE's, there is no reason to accredit as a VE a person who has a history of rule violations."

Comment date closes January 31, 1991, on PR Docket 90-561; reply comments by March 4, 1991.

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■ The *Southern California Repeater and Remote Base Association's* Nov. 10th general meeting considered 70-cm band technical and administrative changes. There are presently 589 repeater and remote base systems coordinated by SCRRBA on 196 usable frequency pairs between 440-450 MHz. Another 49 proposed repeater systems await assignment whenever a suitable pair can be retrieved. A committee was formed to examine and consider alternatives including using less than 25 kHz channel spacing in southern California. The goal is higher packing density. There will now be three system listings, "Open", "Closed" and "Private." *Closed* repeater membership is considered from all licensees while *Private* system membership is by invitation of the sponsoring group.

■ The *42nd International DX Convention* takes place at the Holiday Inn in Visalia, CA, on April 12-14, 1991. The Northern California DX Club has lined up special reduced air fares, both foreign and domestic, from American Airlines. Ask your travel agent to check the S.T.A.R. #S3141W8 fare schedule. Preregistration is \$45. Further info from Steve/W6MKM: 415/341-0757

■ Listen for N9JL/B, a *hot air balloon beacon* on 28.666 MHz. Lift-off is scheduled for December 1st at 1530Z. Alternate launch dates for the 1-watt 10-meter beacon are Dec. 2, 8, and 9. "Drifter 1" could rise to 100,000 feet above Northern Illinois. Last minute news on 7155 kHz.

■ *DX Spotters aren't giving up!* They still want the SAREX mission on other than their 144.95 frequency. *Ron Parise, WA4SIR*, will activate a ROBOT packet repeater for up to 12 hours a day while aloft. Stations attempting to connect to the ROBOT will transmit on

144.95 and listen on 145 MHz. Stations trying to connect will not listen on 144.95 MHz to determine if the frequency is busy before transmitting, thereby destroying DX PacketCluster nodes. The DX bunch are *very* upset that they might "miss the big one" during the SAREX STS-35 shuttle mission. SAREX is sponsored by AMSAT and ARRL who claim that the use of 144.95 MHz for space operation predates DX spotting. ARRL President *Larry Price/W4RA* says "It is not practical to change the frequency of the presently scheduled SAREX." Dialog between NASA, AMSAT, ARRL and DXers has now broken down leaving 144.95 DX users frustrated and angry.

■ There are several ways you can reach us here at *The W5YI Group*. W5YI-VEC (testing info): 817/461-6443. W5YI Business Office: 817/274-0400 (8:30 a.m. and 4:30 p.m. M-F.) VISA/MasterCard orders for license preparation materials **ONLY**: (toll free) 1-800-669-W5YI (9594). Dedicated FAX line: 817/548-W5YI. FAX-line may be used to send us recent operator license copies as well as press releases and other information for the *W5YI Report*. We also check our MCI-Mail Box (ID: 351-1297) twice a day. Please be sure to call the right number since they are at different locations. W5YI is normally available at 817/461-6443 at *other* than business hours. Best time to reach me is daily between 6:00 and 7:30 a.m., after 6:30 p.m. CDST ...or anytime weekends.

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■ Norristown, Pennsylvania amateur *Ernest Wood, KA3WHZ* was traced by FCC engineers on Oct. 30. Wood was allegedly operating modified HTs transmitting in the 130-175 MHz band. U.S. Marshalls seized the nonlicensed equipment. The action took place after the Pennsylvania State Police and the local fire department and cab company complained of interference. The interference included impersonations of firefighters and police officers, interruptions of emergency communications and obscene language, according to the FCC.

■ On Oct. 23 the FCC's Buffalo Facility shut down a *nonlicensed FM station on 90.5 MHz* in Lancaster, New York. Operator Jeffrey Domin was fined \$1,000. On Oct. 27 the pirate station "*Midnight Radio*" in Rowlett, Texas was shut down by engineers from the Dallas Facility. Operator Michael Zurbrick allegedly disallowed inspection of his station, and was fined \$1,600. Midnight Radio was one of scores of pirate stations using the 7410 KHz frequency allocated to international fixed public service.

■ AMSAT-DL officials have been informed that the *launch of RS-14/RUDAK-2 Soviet amateur satellite* will occur on or about November 29, 1990, plus or minus one day. Also, it is not expected that the RUDAK-2 transponder will be turned on until three days after launch. Radio amateurs should not expect to hear the CW beacon from RUDAK-2 until December 1, 1990. Efforts are still under way to provide a launch net on 20M starting about an hour before launch. UA3CR requests the help of radio amateurs worldwide to help collect telemetry and send it to him via packet radio to him once the CW beacon is turned on. The CW telemetry beacon can be heard on a downlink frequency of 145.822 or 145.948 MHz SSB.

■ The Board of Directors of the *Mid-America Coordination Council, Inc.*, have accepted the applications of the states of Ohio and Indiana as the 12th and 13th states into membership of MACC. They are the *largest amateur frequency coordinating organization in the nation*. MACC coordinates Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Minnesota, Missouri, Nebraska, Ohio, Oklahoma, South Dakota and Wisconsin.

■ *1990 Canadian amateur radio growth* is up about 5% over last year. Canada completely deregulated their amateur service on Oct. 1 and it will be interesting to see next year's statistics.

	<u>October</u>	<u>1988</u>	<u>1989</u>	<u>1990</u>
VE0	165	172	177	
VE1	2,105	2,158	2,149	
VE2	4,474	4,594	4,882	
VE3	9,086	9,256	9,715	
VE4	842	841	893	
VE5	830	826	864	
VE6	2,024	2,049	2,144	
VE7	4,249	4,393	4,600	
VE8	90	85	73	
VO1	483	499	540	
VO2	32	29	29	
VY1	50	50	48	
VY2	0	0	163	
VY9	0	2	2	
TOTAL	24,430	24,954	26,279	

Special call sign prefixes have been authorized to Canadian amateurs for use during February to commemorate the *1991 Canada Winter Games*. VE1-VE8 use CG1-CG8, VY1-VY9 use VG1-VG9, VO1 use VO5 and VO2 use VO6.

KV4FZ ALLEGED AS A COMPUTER HACKER

Letters are being circulated in the amateur community concerning the off-the-air conduct of *Herb Schoenbohn, KV4FZ*, of the U.S. Virgin Islands. Alleged is that Schoenbohn defrauded the *Caribbean Automated Long Lines Service, Inc.*, (CALLS) telephone company in 1987 by using - or causing others to use, unauthorized access codes. Supposedly thousands of unauthorized phone calls were made using a computer.

Schoenbohn denies the charges and says the attack is simply revenge by other amateurs who disagree with his views. He told us they stem from a 1987 incident in which he, his wife, Monika, and his son, Chris, supposedly "...made \$39.84 worth of unauthorized telephone calls." Allegedly, Schoenbohn used a computer program or a "blue box" to infiltrate the CALLS telephone system.

Herb's version is that he subscribed to CALLS and after finding the service unsatisfactory, stopped using it. "I read in the newspaper that the business had gone bankrupt. I have not used the service since and that was way back in 1987. I am not a computer hacker. I have never had a blue box. I have never done anything illegally. This is all absolute nonsense."

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In an August 1990 letter to the U.S. Attorney General Richard Thornburgh, and published in the *Virgin Islands Daily News*, **Henry T. Miller, KP2J**, refers to two years of investigation by the Secret Service in the "Herb Schoenbohn toll-fraud case." Miller said a final report was delivered to the U.S. Attorney more than a year ago.

A September 1990 letter written by **Arthur B. Candell, N4PCK**, of Silver Springs, Florida, was distributed to many hams involved in the 20 meter net dispute. It charges that Schoenbohn through his "...non-registered Nova Communications,[has] blue boxed, cheated and defrauded Mr. Malcom Ford and his Virgin Islands telephone company of thousands of dollars by criminally bypassing toll systems of Mr. Ford's company through the stealing of confidential computer entry codes." I spoke to Mr. Candell who asserts that he can provide authenticated material to back up this statement.

We decided to talk to Malcom Ford, the previous owner of the *Caribbean Automated Long Lines Services, Inc.* CALLS is now operating under Chapter 11 having been taken over by another firm. I asked Ford if there was anything to the charge that Schoenbohn used unauthorized telephone access codes to defraud CALLS out of thousands of dollars. "That is absolutely correct," he said.

I asked Ford if he had proof that it was Schoenbohn and his family who make the illegal phone calls. Ford said Schoenbohn had not yet been officially indicted, "However, the U.S. Secret Service conducted a full investigation based on our original investigation. The person who prepared the investigation for us was my number two person in the company, Carmine Carrillo. Her background is thirteen years with the Army CID, Criminal Investigative Division ...similar to the FBI in civilian life. Carmine is an expert in white collar, economic crime."

The Carrillo report was first presented to the local authorities who took no action. "We then gave the case to the U.S. Secret Service who has jurisdiction over this type of fraud. The U.S. Secret Service took the extensive information ...originally over 200 pages ...that we developed and went out and confirmed all the phone calls and got it in writing. As part of our report, we have several letters directly to the Secret Service confirming that Schoenbohn did in fact make the phone calls. ...There were thousands of calls... directly attributable to Schoenbohn was at least \$2,000 plus," said Ford.

According to Ford, "The Secret Service handed that report over to the U.S. Attorney back in August of 1989. There are two possible reasons why that this case is still sitting. One, according to the U.S. Attorney, there is still further investigation going on - which may in fact be very true. The other possibility is that there is political pressure being brought to bear to stall this case and sit on it. I can't tell you which is the truth." A third choice, according to Schoenbohn, is that the charges are totally unfounded.

Ford said, "I have been very patient. I have sat and watched this game go on down here [in the U.S. Virgin Islands]. I have lived here twenty years. We are in the midst of a criminal wave down here... Nothing is going to happen on the local scene until this whole mess is exposed. The local government does not want anyone to know what is going on.... We have a very serious criminal problem.... There is a tremendous amount of corruption in the [local] government. ...The only way is to get national exposure on this case ...with the political connections that it has. ...Schoenbohn should have been prosecuted a long time ago. He works for the police department and has access to a tremendous amount of information ...access to the police department files. There is so many skeletons on all these politicians that all he has to do is rattle the cage and he will get protection forever. This is a criminal's paradise down here. Schoenbohn is part of the corruption and he is insulated. So far he is like the sacred cow that can't be touched. They are scared that if they ever convert this scared cow, he will run for his life and name all the others. He is never going to go down by himself ...he is going to take a whole bunch of people with him. The local government people don't want to prosecute him. The feds are being held off by political pressure ...again I can't prove it but it certainly is very circumstantial. You can quote me as having that opinion."

Again, Schoenbohn said all of this is absolute nonsense. "During my political campaign for the Senate. Of all the political candidates, I was hardest hitting on the failures of the present administration on their softness on drugs and crime. When challenged, I gave specific details on a crack house owned by high officials in the government at tremendous risk to my personal safety and that of my family. Furthermore, Mr. Ford is entitled to his opinion of me, however, he is completely wrong." Schoenbohn alleges that Ford himself ran an illegal toll bypass operation to the nearby British Islands which were shut down by the British government and now seeks revenge.

W5YI REPORT

National Volunteer Examiner Coordinator

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FCC FINES BAXTER – FOR THIRD TIME!

The FCC has shown no signs of letting up in its recent enforcement program against questionable HF amateur operations. The agency issued yet another *Notice of Apparent Liability (NAL)*, for \$300, to **Glenn Baxter, K1MAN** of Belgrade Lakes, Maine.

As the result of previous violation notices, Baxter already owes the Commission \$1,000 for interference and \$500 for broadcasting ...for a total amount of \$1,800 in penalties. Baxter's "International Amateur Radio Network" transmissions are heard for long periods on several bands each day.

The source of the latest NAL is the Belfast, Maine Field Operations Bureau Facility. Engineer in Charge Barry Bohac wrote K1MAN, "You repeatedly used the Amateur Radio Service to facilitate the business activities of several amateur radio organizations with which you are connected.

"Specifically, on November 1, 1990; November 5, 1990; and on many other dates you broadcast announcements soliciting membership in the International Amateur Radio Network (IARN) and in the Amateur Radio Peace Corps. This activity is a facilitation of the business affairs of these organizations and therefore in violation of Section 97.113(a).

"[Y]ou are granted 30 days from the date of this Notice to pay the forfeiture or give reasons why it should be reduced or not imposed. We will at that time consider all the facts before us in making our determination. ...We trust that you will correct the situation which led to these violations and that they will not recur."

Section 97.113(a) forbids amateur transmissions for the purpose of facilitating business or commercial affairs "of any party" (whether for-profit or non-profit).

Ironic announcements

An ironic wrinkle in the case concerns an announcement K1MAN made on Nov. 1, monitored by the FCC on 3.975 kHz. He pointed out that business use of amateur radio isn't allowed -- and then played a solicitation for memberships that the FCC found to be business communications!

The solicitation was voiced by Audrey English. She asked for those "eager to take your electronics, computers, and communications skills" and use them in developing countries through an "Amateur Radio

Peace Corps". She invited listeners to write, call, fax or download application forms and repeatedly gave addresses and multiple phone numbers.

K1MAN also solicited articles for publication in a magazine and for IARN memberships.

Baxter rebuts

In his latest transmissions, K1MAN says that his response will be: "All IARN amateur radio activities are strictly free, everything is volunteer, and nothing is sold. This contrasts markedly with FCC-allowed on-the-air support of marathons which are non-ham radio related, on-the-air announcement of hamfests which charge admission fees, and ARRL's use of QST in front of their information bulletins and code practice transmissions which just happens to be name of their QST magazine costing \$30 per year.

"Also, ARRL code practice requires you to buy QST magazine to see if you have copied their code practice transmissions correctly. W1AW operators are paid employees of the American Radio Relay League, which is specifically authorized by FCC rules. FCC rules also allow ham radio swap nets where equipment is bought and sold and money changes hands. IARN is clearly not a business like ARRL, and is in no way promoting the business activities of any organization or person. The Belfast, Maine Notice of Apparent Liability is without foundation and is inconsistent with perfectly legitimate amateur practice," he said.

QST, CQ, 73?

Not only is QST the name of a magazine as well as a recognized Amateur Radio Q-signals, but CQ and 73 are used on the air everywhere and are also the names of publications. Even the callsign of your editor is part of this publication's name! We doubt that the Commission would rule against use of these common signals.

Baxter has also made a second request for a trial like hearing. He contends, pursuant to U.S. Federal Title 47 §503(3)(A), such a hearing is permitted before an Administrative Law Judge. Baxter says 47 503 (3)(A) reads: "At the discretion of the Commission, a forfeiture penalty may be determined against a person under this subsection after notice and an opportunity for a hearing before the Commission or an administrative law judge thereof.." So far, the FCC has refused to allow the hearing.

(See you in two weeks. de W5YI/Fred)